

Fugitive Economic Offenders

Abstract

Fugitive economic offenders act came into force on 21st April, 2018 but was assent by the president on 31st July, 2018. This act is a must needed act because the individuals who are mostly big industrialists pilfer huge amounts of money from banks, leaving them in debt and runaway to another country and refuse to come back to the country because this will bring legal action against them. This act prohibits the offender to leave the country if they leave the country they can be called back and a legal action can be taken against them, their properties can be confiscated and once found guilty of schedule offence then will be declared as fugitive economic offender by the special court. As all the laws are not perfect there are loopholes in it but overall it is huge relief on the part that new specific laws have been made to deal with this significant crime.

“Fugitive Economic Offenders” are those individuals against whom there is an arrest warrant which should be in relation to any schedule economic crime and either the individual has left the country or is in aboard and not willing to return back to the country. As per current scenario we have been witnessing that there are many cases in which big industrialist like Nirav Modi, Lalit Modi, Mehul Choksi, Vijay Mallya they took the debts from the bank, which are the money of government and the tax payers and they left the country and enjoying their life because they refuses to return back to India. This situation cost a massive loss on the economy of India so there was an immediate need of a particular act which prohibits these offenders to damage a country’s economy and there should be a legal proceedings which they cannot run away easily. In order to get rid of this fraud the House of people proposed a bill name Fugitive Economic Offenders Bill. The bill was introduced on 12th day of March, 2018 in the Lok Sabha as the bill did not get the consent it could not be taken up for the consideration, but the necessity of the bill in India is not hidden from anyone. Thus the President of India took a notice and used his power under Article 123 of Constitution of India and Fugitive Economic Offenders Ordinance came on 21st April 2018.

Under Article 123 when the Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require.¹ The ordinance which as been passed by the President as the same effect as of an Act of Parliament but it is a temporary solution as it ceases to operate when it expires in 6 weeks from the reassemble of the Parliament. After several debate the Parliament gave the consent and without any amendments in ordinance, Fugitive Economic Offenders Bill got the assent of the president on 31st July, 2018. Fugitive Economic Offenders Act, 2018 shall be deemed to have come into force on the 21st day of April, 2018.²

Fugitive Economic Offenders Act is for those individuals who commits a schedule offences and the debt amount is of 100 crores or more. Under this Act offences should be under schedule: Counterfeiting, Forgery, Fraudulent removal of property and cheating under the Indian Penal Code, 1860, Dishonour of cheque under the Negotiable Instruments Act, 1881, Offences under the Reserve Bank of India Act, 1934, Taking of gratification to influence a public servant under the Prevention of Corruption Act, 1988, Money laundering offences

¹ <https://indiankanoon.org/doc/1090693/>

² <https://taxguru.in/corporate-law/fugitive-economic-offenders-act-2018.html>

under the Prevention of Money Laundering Act, 2002, Fraud under the Companies Act, 2013, and Defrauding creditors under the Insolvency and Bankruptcy Code, 2016.

Powers Under The Act

Under Prevention of Money Laundering Act 2002 there a unit called Financial Intelligence Unit [FIU]. It is the arms of the Ministry of Finance. The Director/Deputy Director has the authorisation to file the case in Special Court against the individual when he/she has a reasonable facts to believe that the individual is a fugitive economic offender. Firstly there will be a submission of an application requesting in Special Court that the individual who has committed the schedule offence should be declared as the Fugitive Economic Offender under the Act.

After this the director of FIU will have the power to attach the property of the offender for 30days without any permission of the Special Court. Here, “attaching the property” means the offender cannot sell or use the property. If there is a need to extend the time for the attachment of the property it can be extended up to 180 days with the permission of Special Court.

If the Special Court declares the individual as a Fugitive Economic Offender the offender’s property will be confiscated and sold. The money which will be generated from selling will be given to the financial creditors from whom the debt has been taken.

This Act bars the individual on filing or defending the civil claims but an individual can appeal the decision of the Special Court in High Court.

Challenges Of The Act

1. The biggest issue in this act is that, the individual is not allowed to file a suit defending the civil claims. As this law violated the basic and most important fundament rights Article 14 right to equality which ensures that the every citizen of India has the fundamental right to have an access to justice. There can be a possibility the act can be repealed by the Supreme Court of India.
2. It is not easy to sell the property; e.g. Sahara case, In Aamby Valley incident where the Sahara chief was in jail and the amount required to bring him out was in thousand crores and therefore Sahara tried to sell the property of Aambyvalley but they could not found any buyers.

Precedent : A Publication of Jus Dicere Center of Research In Law

- No buyer is interested to buy a huge amount of property.
 - If any buyer purchases a property, they buy it at a very low cost.
3. When the properties are confiscated, many a times the individual has a Benami Property which will also be confiscated. Firstly, the Benami Property are not easy to be found and secondly when there is a benami property the other partner can claim on the property. The act should be free from loopholes.
 4. This Act violates the principle of innocent unless proven guilty. In this scenario when the special court declares that the person is fugitive economic offender his /her property is sold. But when the individual appeals in High Court and the High Court declares the individual to be innocent and is not a fugitive economic offender but the individual has suffered the loss as once the property sold it cannot be revert back.

Way Forward In Challenges

1. A complete ban on filing civil suit should be clarified reasonably.
2. No time limitation should be there to sell the property to get the amount for the creditors. In this where an individual is appointed from special court to sell the property, buyers don't buy them till they know that the appointed person has the last less time period left to sell the property to clear the debts of the creditors so they wait for the point where the amount reduces and they buy at a very low price but due to this time limitation the debt cannot be fully recovered. As the money is not in the evaluation of the property.

Thus this Act is moreover a relief as the fugitive economic offenders cannot escape the safe route by taking all the money from banks and enjoying in aboard. This law will prohibits these schedule offenders and will make sure the debt they took from banks are cleared legally.